

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. |
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09/073,643 05/06/98 MCKITTRICK

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EXAMINER

PM11/0421

SHANTON FORD - PAPER NUMBER

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DATE MAILED:

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3671 04/21/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademark

| | | |
|------------------------------|--------------------------------------|-----------------------------------|
| Office Action Summary | Application No. 09/073,643 | Applicant(s) McKittrick |
| | Examiner H. SHACKELFORD | Group Art Unit 3671 |

Responsive to communication(s) filed on Feb 16, 1999

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

Claim(s) 1-4 and 7-11 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

Claim(s) _____ is/are allowed.

Claim(s) 1-4 and 7-11 is/are rejected.

Claim(s) _____ is/are objected to.

Claims _____ are subject to restriction or election requirement.

Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on _____ is/are objected to by the Examiner.

The proposed drawing correction, filed on _____ is approved disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All Some* None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) _____.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3671

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

2. Claims 1, 2, 4, 7, 8 9, 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Hoffman.

Hoffman discloses a leverage enhancing assembly for "mops, brooms, rakes and similar tools" (see abstract) having a frame 4, a working implement at a proximal end, a brace 24 at the distal end which engages the forearm of the user. A handle 44 is attached to the frame member intermediate of the working implement and the brace 24, which projects away from the frame member generally transversely with respect to the longitudinal dimension of the frame. The portion of the brace at the forearm engaging surface (spaced 180 degrees from its connection to the longitudinal frame) is directed in the opposite direction as the projection of the handle. This forearm engaging surface is also not located in the general plane of the frame member.

Re claims - Hoffman also disclose the handle made from injection molded plastic, which conforms to a hand (see col. 6 lines 45-52). The handle need not have the specific indentations to be considered conforming to a hand.

Art Unit: 3671

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman. Hoffman is described above. However, forearm engaging portion of the brace does not have an elastic cushion attached thereto.

It would have an obvious choice in design to provide an elastic cushion on the forearm engaging portion of the strap 24 to provide a more comfortable rest for the forearm. To provide padding wherever necessary on a tool to provide comfort and ease of operation, especially when the tool is used for a long period of time or handling a burdensome load would be considered obvious.

Applicant should note that the motivation for providing such structure need not be the same as that of applicant, as long as a viable motivation is provided.

5. Applicant's arguments filed 2-16-99 have been fully considered but they are not persuasive. On page 4, third paragraph, applicant argues that Hoffman does not disclose a forearm brace for a hand held implement. As seen in figures 3A and 3B, the device 4 is a device held by the hand which includes a strap or brace attached to the frame, wherein the inner diameter or surface of the strap engages the forearm. A brace is defined as "something that connects or

Art Unit: 3671

fastens" in Webster's Ninth New Collegiate Dictionary, and reads on the strap of Hoffman.

Applicant make the point that the long handled tool is disclosed as having a forearm engaging strap and the hand tool is disclosed as having a wrist engaging strap. Applicant should note that there is nothing in Hoffman that precludes the long handled tool as being "a hand held gardening implement" as claimed. The long handled device is indeed a tool held by the hand as seen in figures 3A and 3B.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to H. Shackelford whose telephone number is (703) 308-2978.

Application/Control Number: 09/073,643

Page 5

Art Unit: 3671



H. SHACKELFORD
PRIMARY EXAMINER
GROUP 3600

hcs

April 15, 1999